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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,421	11/28/2000	Kevin M. Boyd	2000-0062	7000
30083	7590	05/19/2004	EXAMINER	
PERKINS COIE LLP/AWS			NGUYEN, HUY D	
P.O. BOX 1247			ART UNIT	
SEATTLE, WA 98111-1247			PAPER NUMBER	

2681
DATE MAILED: 05/19/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/723,421

Applicant(s)

BOYD ET AL.

Examiner

Huy D Nguyen

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-11 and 14-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1-8, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Invention I (claims 1-8, 12-13, 19-20) and invention II (claims 9-11, 14-18) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed. The subcombination has separate utility such as first and second random period of time are different.

2. During a telephone conversation with Christopher J. Daley-Watson (Registration No. 34807) on 05/06/2004 a provisional election was made to prosecute the invention I, claims 1-8, 12-13, 19-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-11, 14-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Response to Arguments

3. Applicant's arguments with respect to claim 1 has been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 2681

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Regarding claim 1, the term "may" in line 13 is a relative term which renders the claim indefinite. It fails to point out what is included or excluded by the claim language.

Claims 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "favorable" in claims 19-20 is a relative term which renders the claim indefinite. The term "favorable" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charat (U.S. Patent No. 5,774,459) in view of Gendel (U.S. Patent No. 6,608,821).

Art Unit: 2681

Regarding claims 1-4, Charrat discloses a method for accessing a reverse channel for communication from a remote unit to a base station, comprising: waiting a random period of time in response to determining that the reverse channel is available at a first time (col. 4, lines 9-10); monitoring a forward channel after expiration of the random period of time to determine whether the reverse channel is available at a second time and transmitting to the base station a first portion of data on the reverse channel, the first portion of data being transmitted in response to determining that the reverse channel is available at the second time (col. 4, lines 11-13).

Charrat fails to teach transmitting a first portion of data in one of multiple timeslots, wherein the first portion of data may relate to a second portion of data transmitted on another timeslot.

Gendel teaches transmitting a first portion of data in one of multiple timeslots, wherein the first portion of data may relate to a second portion of data transmitted on another timeslot (col. 3, lines 59-67; col. 4, lines 1-7; col. 5, lines 36-47; col. 6, lines 10-17). It would have been obvious to one of ordinary skill in the art, at the time of invention, to apply the teaching of Gendel to the teaching of Charrat to further decrease the probability of data loss.

Regarding claims 5-7, the combination of Charrat and Gendel teach transmitting from the remote unit to the base station a second portion of the data on the reverse channel, the second portion of the data being transmitted in response to a determination that the remote unit has accessed the reverse channel (Charrat, col. 4, lines 32-35).

Regarding claim 8, the combination of Charrat and Gendel teach a step of performing an access failure algorithm in response to determining that the remote unit has not accessed the reverse channel (Charrat, col. 4, lines 14-17).

Art Unit: 2681

8. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charat (U.S. Patent No. 5,774,459) in view of Gendel (U.S. Patent No. 6,608,821) in further view of Yamazaki et al. (U.S. Patent No. 6,724,777).

Regarding claims 19-20, the combination of Charat and Gendel teaches the claimed invention except the step of performing an access check subroutine and if performance of the access check subroutine is favorable, then transmitting a second portion of data. However, the preceding limitation is taught in Yamazaki et al. (col. 5, lines 26-65). It would have been obvious to one of ordinary skill in the art to apply the teaching of Yamazaki et al. to the combination of Charat and Gendel to enable reliable and efficient data communication.

Allowable Subject Matter

9. Claim 12 is allowed. The following is an examiner's statement of reasons for allowance: Claim 12 has been rewritten in the independent form including all of the limitations of the base claim. Therefore, claim 12 is now allowable with the same reason set forth in the previous office action (paper No. 10).

Claim 13 depends on claim 12. Therefore, it is allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

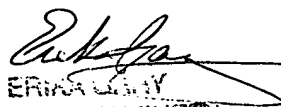
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy D Nguyen whose telephone number is 703-305-3283. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Erika A Gary can be reached on 703-308-0123. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2681

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ERIKA L. GALT
PATENT EXAMINER